

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

ERIC RAY PRICE,

Plaintiff,

v.

LORIE DAVIS, ET AL.,

Defendants.

§
§
§
§
§
§
§
§
§
§

Case No. 6:19-CV-16-JDK-KNM

**ORDER ADOPTING REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

Plaintiff Eric Ray Price, an inmate proceeding *pro se*, filed this civil rights lawsuit pursuant to 42 U.S.C. § 1983. The case was referred to United States Magistrate Judge K. Nicole Mitchell pursuant to 28 U.S.C. § 636. On July 18, 2019, the Magistrate Judge issued a Report and Recommendation (Docket No. 8), recommending that Plaintiff's action be dismissed under the three-strikes provision of 28 U.S.C. § 1915(g). *Id.* at 2–3. Plaintiff filed objections on July 22, 2019. Docket No. 9.


The Court overrules Plaintiff's objections. Plaintiff argues that he is in imminent danger of serious physical injury because the "prison unit violated the water code" and because of physical threats. *Id.* at 1. However, "[n]ew claims and issues may not . . . be raised for the first time in objections to a Report and Recommendation." *Andrews v. United States*, No. 4:16-CV-846, 2019 WL 913873, at *1 (E.D. Tex. Feb. 22, 2019). Plaintiff's complaint only mentions conduct that occurred in the past; namely, a "fan fell off of a trash can on [plaintiff's] feet because neither [were] secured." Docket No. 1 at 4. Because Plaintiff does not show that he is in imminent danger of serious physical injury, his claims are dismissed.

Having made a *de novo* review of the objections raised by Plaintiff to the Magistrate Judge's Report, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and Plaintiff's objections are without merit. The Court therefore adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court.

Accordingly, it is hereby **ORDERED** that the Report and Recommendation (Docket No. 8) be **ADOPTED**. It is further

ORDERED that the above-styled civil action is **DISMISSED WITH PREJUDICE** as to the refiling of another *in forma pauperis* lawsuit raising the same claims as herein presented, but without prejudice as to the refiling of the lawsuit without seeking *in forma pauperis* status and upon payment of the full \$400.00 filing fee. Should Plaintiff pay the full filing fee in this lawsuit within fifteen days of the date of entry of this order, he shall be allowed to proceed in this lawsuit as though the full filing fee had been paid from the outset.

So **ORDERED** and **SIGNED** this **6th** day of **April, 2020**.


JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE